



**IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF MISSISSIPPI
EASTERN DIVISION**

JERRY DAVID NANCE

PLAINTIFF

VS.

CIVIL ACTION NO. 4:05CV105LR

**PEAVEY ELECTRONICS CORPORATION
and FREEMAN DECORATING SERVICES, INC.**

DEFENDANTS

MEMORANDUM OPINION AND ORDER

This matter came before the court on the Defendant Freeman's Motion to Dismiss Plaintiff's Case for Failure to Prosecute or Alternatively, Motion for Entry of a Show Cause Order and Stay of Deadlines. The basis of the Motion was the failure of the Plaintiff to make himself available to the court or to his prior counsel, and the delays and expense caused by that failure. In response to the Motion, the Magistrate Judge issued a Show Cause Order, requiring the Plaintiff to show cause why this action should not be dismissed. The Plaintiff has since submitted a letter to the court, explaining that a variety of personal and professional difficulties have caused him to be unable to retain new counsel or to prosecute this action. According to that letter, the Plaintiff will be able to hire a new attorney by November 3, 2006.

Based upon the representations made by the Plaintiff, the court is of the opinion that dismissal of his case would be too severe a sanction at this time. However, the court will not tolerate further delay caused by the Plaintiff or an inability to communicate with him. Therefore, the Motion to Dismiss will be denied and this case will be continued to the next trial calendar. The Plaintiff will notify the court that he has retained new counsel or will proceed to represent

himself by November 15, 2006. Future return of mail addressed to the Plaintiff, or a failure to abide by the terms of this or any future order, may result in the dismissal of this action.

IT IS THEREFORE ORDERED, as follows:

1. that the Defendant Freeman's Motion to Dismiss is hereby **denied**;
2. that the Plaintiff is granted until November 15, 2006, to employ private counsel or to notify the court in writing that he will proceed to represent himself. Should the Plaintiff fail to retain counsel or notify the court that will represent himself, this case will be subject to dismissal; and
3. that the Case Management Plan Order previously entered in this matter is hereby amended, as follows:
 - a. The trial of this matter will be held on the trial calendar that begins on April 16, 2007, and ends on April 27, 2007.
 - b. The pretrial conference will be held on March 12, 2007.
 - c. Discovery shall be completed by December 18, 2006.
 - d. The deadline for submitting motions, other than motions *in limine*, is January 2, 2007.

IT SO ORDERED, this the 27th day of October, 2006.



UNITED STATES DISTRICT JUDGE